

08 CV 00512

JUDGE GRIESA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORKWANDA JOHNSON, individually, and PATRICK
JOHNSON, an Infant, by his M/N/G WANDA JOHNSON,

Plaintiffs,

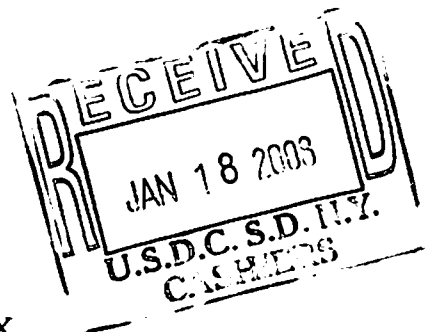
-against-

CITY OF NEW YORK, ERIC REYNOLDS,
JOSEPH PETRILLO, and JOHN and JANE DOES 1 through
10, individually and in their official capacities, (the names John
and Jane Doe being fictitious, as the true names are presently
unknown),

Defendants.

COMPLAINT

Index No.:

Jury Trial Demanded

Plaintiffs WANDA JOHNSON and PATRICK JOHNSON, by their attorneys, Leventhal
& Klein, LLP, complaining of the defendants, respectfully allege as follows:

Preliminary Statement

1. Plaintiffs bring this action for compensatory damages, punitive damages and attorney's fees pursuant to 42 U.S.C. §§1983 and 1988 for violations of their civil rights, as said rights are secured by said statutes and the Constitution of the State of New York and the United States. Plaintiffs also assert supplemental state law claims.

JURISDICTION

2. The action is brought pursuant to 42 U.S.C. §§ 1983 and 1988, and the Fourth and Fourteenth Amendments to the United States Constitution.

3. Jurisdiction is found upon 28 U.S.C. §§1331, 1343 and 1367.

VENUE

4. Venue is properly laid in the Southern District of New York under 28 U.S.C. § 1391(b), in that it is the District in which the claim arose.

JURY DEMAND

5. Plaintiffs respectfully demand a trial by jury of all issues in the matter pursuant to Fed. R. Civ. P. 38 (b).

PARTIES

6. Plaintiffs WANDA JOHNSON and PATRICK JOHNSON are citizens of the United States, and at all relevant times residents of Bronx County.

7. Defendant CITY OF NEW YORK was and is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.

8. Defendant CITY OF NEW YORK maintains the New York City Police Department, a duly authorized public authority and/or police department, authorized to perform all functions of a police department as per the applicable sections of the aforementioned municipal corporation, City of New York.

9. That at all times hereinafter mentioned, the individually named defendants, ERIC REYNOLDS, JOSPEH PETRILLO, and JOHN and JANE DOES 1 Through 10, were duly sworn police officers of said department and were acting under the supervision of said department and according to their official duties.

10. That at all times hereinafter mentioned the defendants, either personally or through their employees, were acting under color of state law and/or in compliance with the official rules, regulations, laws, statutes, customs, usages and/or practices of the State or City New York.

11. Each and all of the acts of the defendants alleged herein were done by said defendants while acting within the scope of their employment by defendant CITY OF NEW YORK.

12. Each and all of the acts of the defendant alleged herein were done by said defendants while acting in furtherance of their employment by defendant CITY OF NEW YORK.

FACTS

13. On October 21, 2006, at approximately 6:45 p.m., plaintiffs WANDA JOHNSON and PATRICK JOHNSON were lawfully in front of 2609 Briggs Avenue, County of Bronx, and State of New York.

14. At the aforesaid time and place, the defendants, members of the New York City Police Department, unlawfully and without justification assaulted, battered and beat plaintiff PATRICK JOHNSON, who was 15 years old, by choking plaintiff, slamming his head, and throwing plaintiff inside a police vehicle with the intent to injure him even though plaintiff posed no threat of harm to any of the defendants. Thereafter in further retaliation, the defendant NYPD officers physically removed plaintiff from the police vehicle, threw him to the ground, and struck, punched, and kicked plaintiff about his head, face, and body while plaintiff was restrained with handcuffs thereby causing plaintiff severe injuries, including but not limited to, a broken nose, wrist injuries, facial contusion, and epistaxis. Further, NYPD officers over tightened handcuffs around plaintiff's wrists and refused to loosen the handcuffs despite plaintiff's repeated requests.

15. Plaintiff PATRICK JOHNSON was thereafter arrested and prosecuted by the NYPD officers in an effort to cover up their abuse of plaintiff. Plaintiff was taken against his

will to the NYPD 52nd Precinct, where he repeatedly requested but was refused medical treatment despite plaintiff's obvious injuries.

16. At the aforesaid time and place, the defendants, members of the New York City Police Department, unlawfully and without justification assaulted, battered and beat plaintiff WANDA JOHNSON by punching her in her face and on her stomach. Thereafter, a NYPD officer threw plaintiff up against a police vehicle and restrained plaintiff with handcuffs which were purposefully over tightened. Plaintiff was thereafter arrested and prosecuted by the defendant NYPD officers in an effort to cover up their abuse of plaintiff. Plaintiff was taken against her will to the NYPD 52nd Precinct where she repeatedly requested but was refused medical treatment despite plaintiff suffering from an asthma attack and her obvious injuries.

17. As a result of the above, plaintiffs WANDA JOHNSON and PATRICK JOHNSON sought medical attention.

18. All of the above occurred while NYPD officers failed to intervene in the illegal conduct described herein.

19. As a result of the foregoing, plaintiffs WANDA JOHNSON and PATRICK JOHNSON sustained, *inter alia*, physical injuries, emotional distress, embarrassment, and humiliation, anxiety, mental anguish, deprivation of their liberty, violation of constitutional rights, and special damages.

Federal Claims

**AS AND FOR A FIRST CAUSE OF ACTION
(Deprivation of Rights under 42 U.S.C. § 1983)**

20. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs "1" through "19" with the same force and effect as if fully set forth herein.

21. All of the aforementioned acts of defendants, their agents, servants and employees were carried out under the color of state law.

22. All of the aforementioned acts deprived plaintiffs WANDA JOHNSON and PATRICK JOHNSON of the rights, privileges and immunities guaranteed to citizens of the United States by the Fourth and Fourteenth Amendments to the Constitution of the United States of America, and in violation of 42 U.S.C. §1983.

23. The acts complained of were carried out by the aforementioned individual defendants in their capacities as police officers, with the entire actual and/or apparent authority attendant thereto.

24. The acts complained of were carried out by the aforementioned individual defendants in their capacities as police officers, pursuant to the customs, usages, practices, procedures, and the rules of the City of New York and the New York City Police Department, all under the supervision of ranking officers of said department.

25. Defendants, collectively and individually, while acting under color of state law, engaged in conduct that constituted a custom, usage, practice, procedure or rule of the respective municipality/authority, which is forbidden by the Constitution of the United States.

AS AND FOR A SECOND CAUSE OF ACTION
(Excessive Force under 42 U.S.C. § 1983)

26. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs numbered "1" through "25" with the same force and effect as if fully set forth herein.

27. The level of force employed by defendants was excessive, objectively unreasonable and otherwise in violation of plaintiffs WANDA JOHNSON and PATRICK JOHNSON's constitutional rights.

28. As a result of the aforementioned conduct of defendants, plaintiffs WANDA JOHNSON and PATRICK JOHNSON's constitutional right to be free from excessive force was violated and they sustained physical injuries.

AS AND FOR A THIRD CAUSE OF ACTION
(Failure to Intervene under 42 U.S.C. § 1983)

29. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs numbered "1" through "28" with the same force and effect as if fully set forth herein.

30. Defendants had an affirmative duty to intervene on behalf of plaintiffs WANDA JOHNSON and PATRICK JOHNSON, whose constitutional rights were being violated in their presence by other officers.

31. The defendants failed to intervene to prevent the unlawful conduct described herein.

32. As a result of the foregoing, plaintiffs WANDA JOHNSON and PATRICK JOHNSON's liberty was restricted for an extended period of time, they were put in fear of their safety, and they were humiliated and subjected to handcuffing and other physical restraints, and assaulted without probable cause.

AS AND FOR A FOURTH CAUSE OF ACTION
(Malicious Abuse of Process under 42 U.S.C. § 1983)

33. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "1" through "32" with the same force and effect as if fully set forth herein.

34. Defendants issued criminal process against plaintiffs WANDA JOHNSON and PATRICK JOHNSON by causing them to be arraigned and prosecuted for various violations of the Penal Law.

35. Defendants caused plaintiffs WANDA JOHNSON and PATRICK JOHNSON to

be prosecuted in order to obtain a collateral objective outside the legitimate ends of the legal process, to wit: to cover up their acts of brutality and abuse of authority and thereby violated plaintiffs' right to be free from malicious abuse of process.

AS AND FOR A FIFTH CAUSE OF ACTION
(Supervisory Liability under 42 U.S.C. § 1983)

36. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "1" through "35" with the same force and effect as if fully set forth herein.

37. The supervisory defendants personally caused plaintiffs' constitutional injury by being deliberately or consciously indifferent to the rights of others in failing to properly supervise and train their subordinate employees.

AS AND FOR A SIXTH CAUSE OF ACTION
(Deprivation of Substantive Due Process under 42 U.S.C. § 1983)

38. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs numbered "1" through "37" with the same force and effect as if fully set forth herein.

39. The defendants conduct herein was an abuse of executive power so clearly unjustified by any legitimate objective of law enforcement as to be barred by the Fourteenth Amendment.

40. As a result of the foregoing, plaintiffs WANDA JOHNSON and PATRICK JOHNSON were deprived of their liberty and right to substantive due process, causing severe and permanent emotional and physical injuries.

AS AND FOR A SEVENTH CAUSE OF ACTION
(Municipal Liability under 42 U.S.C. § 1983)

41. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "1" through "40" with the same force and effect as if fully set forth herein.

42. Defendants, collectively and individually, while acting under color of state law, engaged in conduct that constituted a custom, usage, practice, procedure or rule of the respective municipality/authority, which is forbidden by the Constitution of the United States.

43. The aforementioned customs, policies, usages, practices, procedures and rules of the City of New York Police Department included, but were not limited to, physically abusing citizens and then committing perjury and/or manufacturing evidence in an effort to convict such individuals. In addition, the City of New York engaged in a policy, custom or practice of inadequate screening, hiring, retaining, training and supervising its employees, which was the moving force behind the violation of plaintiffs WANDA JOHNSON and PATRICK JOHNSON'S rights as described herein. As a result of the failure of the City of New York to properly recruit, screen, train, discipline, and supervise its officers, including the individual defendants, defendant CITY OF NEW YORK has tacitly authorized, ratified, and has been deliberately indifferent to, the acts and conduct complained of herein.

44. The foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York Police Department constituted deliberate indifference to the safety, well-being and constitutional rights of plaintiffs WANDA JOHNSON and PATRICK JOHNSON.

45. The foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department were the direct and proximate cause of the constitutional violations suffered by plaintiffs WANDA JOHNSON and PATRICK JOHNSON as alleged herein.

46. The foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department were the moving force behind the

Constitutional violations suffered by plaintiffs WANDA JOHNSON and PATRICK JOHNSON as alleged herein.

47. As a result of the foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department, plaintiffs WANDA JOHNSON and PATRICK JOHNSON were unlawfully beaten, detained, incarcerated, prosecuted, and otherwise subjected to physical abuse.

48. Defendants, collectively and individually, while acting under color of state law, were directly and actively involved in violating plaintiffs WANDA JOHNSON and PATRICK JOHNSON'S constitutional rights.

49. All of the foregoing acts by defendants, defendants deprived plaintiffs WANDA JOHNSON and PATRICK JOHNSON of federally protected rights, including, but not limited to, the right:

- A. Not to be deprived of liberty without due process of law;
- B. To be free from malicious abuse of process;
- C. To receive equal protection under law; and
- D. To be free from the use of excessive force and/or the failure to intervene..

50. As a result of the foregoing, plaintiffs WANDA JOHNSON and PATRICK JOHNSON are entitled to compensatory damages in an amount to be fixed by a jury, and are further entitled to punitive damages against the individual defendants in an amount to be fixed by a jury.

Supplemental State Law Claims

51. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "1" through "50" with the same force and effect as if fully set forth herein.

52. Within ninety (90) days after the claim herein accrued, plaintiffs WANDA JOHNSON and PATRICK JOHNSON duly served upon, presented to and filed with the City of New York, a Notice of Claim setting forth all facts and information required under the General Municipal Law 50-e.

53. The City of New York has wholly neglected or refused to make an adjustment or payment thereof and more than thirty (30) days have elapsed since the presentation of such claim as aforesaid.

54. The action was commenced within one (1) year and ninety (90) days after the cause of action herein accrued.

55. Plaintiffs WANDA JOHNSON and PATRICK JOHNSON have complied with all conditions precedent to maintaining the instant action.

56. This action falls within one or more of the exceptions as outlined in C.P.L.R. 1602.

AS AND FOR AN EIGHTH CAUSE OF ACTION
(Malicious Abuse of Process under laws of the State of New York)

57. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "1" through "56" with the same force and effect as if fully set forth herein.

58. Defendants issued criminal process against plaintiffs by causing them to be arrested, arraigned and prosecuted in criminal court and family court for an improper purpose.

59. Defendants caused plaintiffs to be prosecuted in order to obtain a collateral objective outside the legitimate ends of the legal process, to wit: to cover up their acts of brutality.

AS AND FOR A NINTH CAUSE OF ACTION
(Negligent Screening, Hiring, and Retention under the laws of the State of New York)

60. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraph numbered "1" through "59" with the same force and effect as if fully set forth herein.

61. Upon information and belief, defendant City of New York failed to use reasonable care in the screening, hiring and retention of the aforesaid defendants who conducted and participated in the arrest and assault of plaintiffs WANDA JOHNSON and PATRICK JOHNSON.

62. Defendant City of New York knew, or should have known in the exercise of reasonable care, the propensities of the individual defendants to engage in the wrongful conduct heretofore alleged in the Complaint.

AS AND FOR A TENTH CAUSE OF ACTION
(Negligent Training and Supervision under the laws of the State of New York)

63. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "1" through "62" with the same force and effect as if fully set forth herein.

64. Upon information and belief the defendant City of New York failed to use reasonable care in the training and supervision of the aforesaid defendants who conducted and participated in the arrest and assault of plaintiffs WANDA JOHNSON and PATRICK JOHNSON.

AS AND FOR AN ELEVENTH CAUSE OF ACTION
(Negligence under the laws of the State of New York)

65. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "1" through "64" with the same force and effect as if fully set forth herein.

66. Plaintiffs' injuries herein were caused by the carelessness, recklessness and

negligence of the defendant City of New York and its employees and agents, who were on duty and acting in the scope of their employment when they engaged in the wrongful conduct described herein.

AS AND FOR A TWELFTH CAUSE OF ACTION
(Respondeat Superior liability under the laws of the State of New York)

67. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "1" through "66" with the same force and effect as if fully set forth herein.

68. Defendant City of New York is vicariously liable for the acts of its employees and agents who were on duty and acting in the scope of their employment when they engaged in the wrongful conduct described herein.

AS AND FOR AN THIRTEENTH CAUSE OF ACTION
(Assault under the laws of the State of New York)

69. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs numbered "1" through "68" with the same force and effect as if fully set forth herein.

70. As a result of the foregoing, plaintiffs WANDA JOHNSON and PATRICK JOHNSON were placed in apprehension of imminent harmful and offensive bodily contact.

71. As a result of defendants' conduct, plaintiffs WANDA JOHNSON and PATRICK JOHNSON have suffered physical pain and mental anguish, together with shock, fright, apprehension, embarrassment, and humiliation.

AS AND FOR A NINETEENTH CAUSE OF ACTION
(Battery under the laws of the State of New York)

72. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs numbered "1" through "71" with the same force and effect as if fully set forth herein.

73. Defendants made offensive contact with plaintiffs without privilege or consent.

74. As a result of defendants' conduct, plaintiffs WANDA JOHNSON and PATRICK JOHNSON have suffered physical pain and mental anguish, together with shock, fright, apprehension, embarrassment, and humiliation.

AS AND FOR A TWENTIETH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress under the laws of the State of New York)

75. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs numbered "1" through "74" with the same force and effect as if fully set forth herein.

76. The aforementioned conduct was extreme and outrageous, and exceeded all reasonable bounds of decency.

77. The aforementioned conduct was committed by defendants while acting within the scope of their employment by defendant CITY OF NEW YORK.

78. The aforementioned conduct was committed by defendants while acting in furtherance of their employment by defendant CITY OF NEW YORK.

79. The aforementioned conduct was intentional and for the sole purpose of causing severe emotional distress to plaintiffs WANDA JOHNSON and PATRICK JOHNSON.

80. As a result of the aforementioned conduct, plaintiffs WANDA JOHNSON and PATRICK JOHNSON suffered severe emotional distress, physical and mental injury, together with embarrassment, humiliation, shock, fright, and loss of freedom.

WHEREFORE, plaintiffs WANDA JOHNSON and PATRICK JOHNSON demand judgment and pray for the following relief, jointly and severally, against the defendants:

- (A) full and fair compensatory damages in an amount to be determined by a jury:
- (B) punitive damages in an amount to be determined by a jury:
- (C) reasonable attorney's fees and the costs and disbursements of this action; and
- (D) such other and further relief as appears just and proper.

Dated: Brooklyn, New York
January 18, 2008

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By: 
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COMPLAINT

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Defendants.

CITY OF NEW YORK, ERIC REYNOLDS,
JOSEPH PETRILLO, and JOHN and JANE DOES 1 through
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